4396

SUPREME COURT OF THE UNITED STATES.

No. 140.

CHRISTIAN OTT, COMPLAINANT AND APPELLANT,

VS.

JAMES G. SOULARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICTS, *sct.*

Pleas before the Hon. R. W. Wells, district judge of the United States for the western district of Missouri, and the Hon. Samuel Treat, district judge of the eastern district of Missouri, and judges of the Circuit Court of the United States for the districts of Missouri, in the eighth judicial circuit, on the 15th day of April, A. D. 1858.

CHRISTIAN OTT
agst.
JAMES G. SOULARD.

Be it remembered, that heretofore, to wit, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-seven, came the complainant in the above entitled cause, and filed in the office of the clerk of the United States circuit court for the districts of Missouri his bill in chancery against the aforesaid defendant; which said bill is in the words following, to wit:

U. S. OF AMERICA,
Districts of Missouri.

April Term United States Circuit Court, for 1857.

To the Honorable Judges of said Court, in chancery sitting:

Christian Ott, of St. Louis, who is a citizen of the State of Missouri, brings this his bill against James G. Soulard, of Illinois, and a citizen of the State of Illinois; and thereupon your orator complains, and says: that one Robert Duncan claimed a pre-emption to fractional section 26, in township 45, of range 7 east, in the county of St. Louis and State of Missouri. That he made proof of his pre-emption, and was permitted to enter the same on the 2d day of May, 1836, at the land office of the U. States in St. Louis, and received the proper certificate of his entry; that he conveyed the same by deed to Elias T. Langham, who caused said deed to be "duly recorded" in the recorder's office of St. Louis county; that part of said fractional section was laid off into town lots, as an addition to the city of St. Louis, and known as Evans and Langham's addition to said city. That said Langham, with his wife, on the 10th day of September, 1836, sold and conveyed to your orator and one Christian Ruff lots number fourteen and fifteen in said addition, the same described as bounded as follows: northwestwardly by Carondelet street or avenue, southwardly by one of the lines of survey numbered 1333, in the name of Antoine Soulard, under Gabriel Cerre, eastwardly by an alley, and northeastwardly by lot number thirteen in said addition.

Your orator and said Ruff immediately entered in possession under said deed of said property described therein, (which is a part of said fractional section 26,) and remained in possession thereof—which deed was duly recorded on the 22d day of September, 1836. That on the second day of February, 1848, said Ruff and your orator executed to each other quit-claim deeds for parts of said two lots, thus making partition thereof between them—said Ruff and his wife executing and delivering to your orator such deed for a part thereof, which part is fully described in the deed herewith filed as an exhibit, marked "A," which reads in the words and figures following, to wit:

Know all men by these presents, that we, Christian Ruff and Mary Anne Ruff, his wife, of the county of St. Louis, in the State of Missouri, for and in consideration of the sum of one dollar to us in hand paid by Christian Ott, of the county and State aforesaid, the receipt of which we do hereby acknowledge, have bargained, sold, transferred and quit-claimed, and by these presents do bargain, sell, transfer and quit-claim unto the said Christian Ott, and to his heirs and assigns forever, all our and each of our right, title, interest and estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, of, in, and to all that certain lot, piece or parcel of ground, lying and being situate in the city and county of St. Louis and State of Missouri, and bounded and described as follows, to wit: a certain lot, numbered fifteen, in Evans and Langham's addition to the city of St. Louis, being one hundred and three (103) feet, fronting on Second street or Carondelet avenue, and running back eastwardly to Soulard's line, about one hundred (100) feet; thence proceeding (or running) in a right angle southwardly to a point (or cedar post,) where it strikes said Second street or Carondelet avenue, bounded on the north by property of said Christian Rueff, on the south and southeast by property claimed by Henry Soulard, and on the west by said Second street or Carondelet avenue; all of which said described property is part and parcel of a large lot of ground conveyed by Elias T. Langham and wife to said Christian Ott and Christian Rueff, by deed dated the tenth day of September, eighteen hundred and thirty-six, and duly recorded in the recorder's office of St. Louis county aforesaid, in book Y, page 214, and following, which, by reference thereto being had, will more fully appear:

To have and to hold the same, with the appurtenances and privileges thereunto belonging or in anywise appertaining, unto him, the said Christian Ott, and to his heirs and assigns forever.

In witness whereof we, the said Christian Rueff and Mary Anne Rueff, his wife, have hereunto subscribed our names and affixed our seals, this 2d day of February, A. D. 1848.

CHRISTIAN RUEFF, [SEAL.]
ANNE MARI RUEFF. [SEAL.]

Done in presence of—JOHN BLACK.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this 2d day of February, eighteen hundred and forty-eight, before me the undersigned, a justice of the peace within and for the county aforesaid, came Christian Ruff and Mary Anne Ruff, his wife, who are both by me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed, for the purposes therein mentioned. She, the said Mary Anne, wife of the said Christian Ruff, being by me first made acquainted with the contents thereof, acknowledged and declared, on an examination apart from her husband, that she executed the said deed, and relinquishes her dower in the real estate therein mentioned, freely, voluntarily, and without compulsion or undue influence of her said husband. Taken, and certified to by me, on the day and year aforesaid.

JOHN BLACK,
Justice of the Peace, St. Louis County, Mo.

COUNTY OF ST. LOUIS, *ss.*

I certify, that the foregoing deed was filed in my office Feb'y 4th, 1848, and is truly recorded in book Q, No. 4, pages 130 and 31.

Given under my hand and seal of office, the date last aforesaid.
[SEAL.] S. D. BARLOW, *Recorder.*

Your orator further shows, that he has continuously held possession under said deed from its execution, and still holds such possession. Your orator further shows, that he and said Ruff, during their joint possession, and he since the execution of said last named deed, made lasting and valuable improvements on said premises described in said last named deed, which improvements consist of two stone buildings fronting on Second street, in said city of St. Louis, on the east side thereof, each two stories high, with cellars under; each containing a store-room below, and four rooms above; each of said buildings thirty by thirty-two feet, and of the value of $4,000 each. Also, a one-story brick building, fronting on said Second street, 40 feet in length, of the value of $1,300 00; a brick kitchen and smoke-house, with cellar under the same, of the value of $600 00; a cistern of the value of $100 00, with some other out-buildings. The value of all said improvements being from ten to twelve thousand dollars.

Your orator further shows, that possession was taken and held under said deeds above described, first by him jointly with said Ruff, then by him alone, after the execution of the deed herewith filed, as exhibit (A,) under the full belief that a good title

vested by said deeds. Your orator fully believing he had a good title as tenant in common with said Ruff, under said deed from Langham, and a good title in severalty, after the delivery of the deed of said Ruff to him, shows, that under this belief, in good faith, the improvements above described were made on said premises described in exhibit (A.)

Your orator further shows, that on the fourteenth day of September, 1855, in this court, the defendant commenced his action of ejectment against your orator, for certain premises therein particularly described, of which the premises described in said exhibit (A) are a part, claiming the same under a paramount title derived from the United States, under a confirmation to James Mackay. That your orator at the time of making said improvements had no knowledge or belief that any title paramount to that under which he claimed, existed.

Your orator further shows, that at the present term of this court, and on the day of April, 1857, the defendant in said action recovered a judgment against your orator for the possession of said premises, and for 646 00 dollars in damages, $34 00 as the monthly rent and costs, all of which will more fully and at large appear by reference to the record of said cause remaining in this court, and which is referred to for greater certainty.

Your orator further shows, that the defendant will proceed to dispossess your orator, and take possession of said improvements as well as the realty, and also collect said damages, unless restrained by the order of this court. Your orator therefore prays that the writ of subpœna may be awarded him against said defendant, James G. Soulard, requiring him to appear to and answer this bill, &c. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may upon his oath, and according to the best of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the several interrogatories hereinafter numbered and set forth, as by the note hereunder written he is required to answer; that is to say—

1st. Whether the matters and things set forth in the foregoing bill of complaint are not true as therein set forth and charged.

2d. Whether the plaintiff's claim to said premises to which said claim is alleged to extend is not such as alleged.

3d. Whether the plaintiff did not make the improvements on said premises of the kind and value, and under the circumstances, alleged in said bill.

4th. Whether the defendant did not bring his action of ejectment against the plaintiff in the manner, at the time, and recover judgment therein, as in the bill alleged.

5th. Whether the defendant's title to said premises is not such as alleged in this bill.

6th. Whether the conveyances, &c., under which the plaintiff alleges his claim, were not made and recorded, &c., as alleged in this bill.

Your orator further prays that the defendant may be enjoined from suing out and executing a writ of possession and execution on said judgment till the value of said improvements owned by the plaintiff are ascertained and found, and till the further order of this court; that upon such value being found the defendant be required to pay the value thereof before enforcing said judgment, and dispossessing the plaintiff; or if the value of the improvements shall exceed the value of the lands without the improvements, that the defendant be required to convey said land to the plaintiff upon the payment by him, at a time to be fixed by the court, of the value of said land so ascertained.

And your orator further prays that such other and further relief may be extended to him in the premises as equity and good conscience may require, &c.

HANNEGAN & JONES,
For Pl'ff.

NOTE.—The defendant, James G. Soulard, is required to answer each of the interrogatories contained in the foregoing bill, being No. 1 to 6, both inclusive.

HANNEGAN & JONES,
For Pl'ff.

STATE OF MISSOURI,
St. Louis County.

Personally appeared before me, the undersigned, a justice of the peace within and for said county, Christian Ott, who being duly sworn, on his oath says the matters and things stated in the foregoing bill are true, so far as stated from his own knowledge, and he believes them true so far as stated from information derived from others.

CHRISTIAN OTT.

Subscribed and sworn to the 22d day of April, 1857.
BER'D HERCKENRATH,
Justice of the Peace.

Afterwards, to wit, at the April term, 1857, of the United States circuit court for Missouri districts, on the 23d day of April, the following proceedings were had in this cause, to wit:

CHRISTIAN OTT, Compl't,
agst. } In Chancery.
JAMES G. SOULARD, Def't.

This day comes the complainant, by his solicitor, and files his

vested by said deeds. Your orator fully believing he had a good title as tenant in common with said Ruff, under said deed from Langham, and a good title in severalty, after the delivery of the deed of said Ruff to him, shows, that under this belief, in good faith, the improvements above described were made on said premises described in exhibit (A.)

Your orator further shows, that on the fourteenth day of September, 1855, in this court, the defendant commenced his action of ejectment against your orator, for certain premises therein particularly described, of which the premises described in said exhibit (A) are a part, claiming the same under a paramount title derived from the United States, under a confirmation to James Mackay. That your orator at the time of making said improvements had no knowledge or belief that any title paramount to that under which he claimed, existed.

Your orator further shows, that at the present term of this court, and on the day of April, 1857, the defendant in said action recovered a judgment against your orator for the possession of said premises, and for 646 00 dollars in damages, $34 00 as the monthly rent and costs, all of which will more fully and at large appear by reference to the record of said cause remaining in this court, and which is referred to for greater certainty.

Your orator further shows, that the defendant will proceed to dispossess your orator, and take possession of said improvements as well as the realty, and also collect said damages, unless restrained by the order of this court. Your orator therefore prays that the writ of subpœna may be awarded him against said defendant, James G. Soulard, requiring him to appear to and answer this bill, &c. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may upon his oath, and according to the best of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the several interrogatories hereinafter numbered and set forth, as by the note hereunder written he is required to answer; that is to say—

1st. Whether the matters and things set forth in the foregoing bill of complaint are not true as therein set forth and charged.

2d. Whether the plaintiff's claim to said premises to which said claim is alleged to extend is not such as alleged.

3d. Whether the plaintiff did not make the improvements on said premises of the kind and value, and under the circumstances, alleged in said bill.

4th. Whether the defendant did not bring his action of ejectment against the plaintiff in the manner, at the time, and recover judgment therein, as in the bill alleged.

5th. Whether the defendant's title to said premises is not such as alleged in this bill.

6th. Whether the conveyances, &c., under which the plaintiff alleges his claim, were not made and recorded, &c., as alleged in this bill.

Your orator further prays that the defendant may be enjoined from suing out and executing a writ of possession and execution on said judgment till the value of said improvements owned by the plaintiff are ascertained and found, and till the further order of this court; that upon such value being found the defendant be required to pay the value thereof before enforcing said judgment, and dispossessing the plaintiff; or if the value of the improvements shall exceed the value of the lands without the improvements, that the defendant be required to convey said land to the plaintiff upon the payment by him, at a time to be fixed by the court, of the value of said land so ascertained.

And your orator further prays that such other and further relief may be extended to him in the premises as equity and good conscience may require, &c.

HANNEGAN & JONES,
For Pl'ff.

NOTE.—The defendant, James G. Soulard, is required to answer each of the interrogatories contained in the foregoing bill, being No. 1 to 6, both inclusive.

HANNEGAN & JONES,
For Pl'ff.

STATE OF MISSOURI,
St. Louis County.

Personally appeared before me, the undersigned, a justice of the peace within and for said county, Christian Ott, who being duly sworn, on his oath says the matters and things stated in the foregoing bill are true, so far as stated from his own knowledge, and he believes them true so far as stated from information derived from others.

CHRISTIAN OTT.

Subscribed and sworn to the 22d day of April, 1857.
BER'D HERCKENRATH,
Justice of the Peace.

Afterwards, to wit, at the April term, 1857, of the United States circuit court for Missouri districts, on the 23d day of April, the following proceedings were had in this cause, to wit:

CHRISTIAN OTT, Compl't, agst. JAMES G. SOULARD, Def't. } In Chancery.

This day comes the complainant, by his solicitor, and files his

bill in chancery in this cause, and moves the court to grant him an injunction enjoining and restraining the defendant, James G. Soulard, from proceeding to have issued or executed his writ of possession and execution, for damages and costs allowed upon the judgment at law rendered at the present term of this court in favor of said defendant against the said complainant; and the court being advised in the premises, now orders and directs that said injunction be granted upon the filing by complainant of a release of errors in the judgment at law prayed to be enjoined, and upon said complainant executing bond with good security in the sum of two thousand three hundred dollars, payable to defendant, and conditioned that he will pay the judgment at law for damages, monthly damages and costs, and all damages and costs which may be awarded in this cause, in case such injunction shall be dissolved in whole or in part, and that he will obey all the orders of this court made in said cause, and upon the filing of said release of errors and execution of bond, the clerk of this court is directed then to issue a subpœna in chancery in said cause, returnable at rules in clerk's office on the first Monday in June next, with a copy of the bill filed, and also a memoranda of the granting of this order endorsed, or said subpœna.

The release of errors referred to in the foregoing order is as follows, viz:

I, Christian Ott, complainant in the above bill, do, in consideration of the granting the injunction prayed for in said bill, hereby release all errors in the judgment, particularly described in the foregoing bill.

Given under my hand and seal this 29th April, 1857.

CHRISTIAN OTT. [SEAL.]

The bond referred to in above order of court is as follows, to wit:

Know all men by these presents that we, Christian Ott, principal, and John Eble, security, are held and firmly bound unto James G. Soulard in the penal sum of two thousand three hundred dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, administrators, and executors, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-ninth day of April, 1857. The condition of the above obligation is such, that whereas the above bounden Christian Ott has prayed for and obtained an injunction upon his bill in chancery, filed in the circuit court of the United States for the districts of Missouri, against the above named James G. Soulard, enjoining and restraining the said James G. Soulard from issuing his writ of possession and execution for damages, monthly damages and costs, upon a judgment at law obtained in said circuit court against the said Christian Ott, on the 15th day of April, 1857, for

the possession of the following described tract or parcel of land, viz: beginning at an old cedar post at the northwest corner of United States survey number 1333 of the confirmed claim of Antoine Soulard under Gabriel Cerre; thence northwardly along the east line of Fifth street to its intersection with the south line of Rutgers as originally laid out, 40 feet wide; thence with the said south line of Rutgers street 221 feet 10 inches to a point in said line; thence on a course north, 63 degrees east, 357 feet to a stone; thence on a course south 45 degrees 45 minutes west to a stone in the north line of said survey, No. 1333; and thence with the same north line to the place of beginning; and for $646 00 damages, and $34 00 monthly damages and costs: Now if the said Christian Ott shall well and truly pay the damages and costs as rendered by the judgment as aforesaid, and shall pay all damages and costs awarded by said court up to the final disposition of said bill and injunction, in case the said injunction shall be dissolved in whole or in part, and shall obey all orders made by said court in said suit in chancery, then this obligation to be void; else to remain in full force and virtue.

CHRISTIAN OTT, [SEAL.]
JOHN EBLE. [SEAL.]

Acknowledged before me this 29th day of April, 1857.

BEN. F. HICKMAN, *Cl'k.*

John Eble being sworn, says that after payment of all his debts and liabilities he is worth the amount of the above bond.

JOHN EBLE.

Subscribed and sworn to before me, this 29th day of April, 1857.

BEN. F. HICKMAN, *Cl'k.*

In accordance with the foregoing proceedings the following subpœna issued, viz:

MISSOURI DISTRICT, *sct.*

The President of the United States to James G. Soulard, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Missouri, on the first Monday of June next, at the city of St. Louis, then and there to answer the bill of complaint of Christian Ott, a citizen of the State of Missouri, filed against you on the 23d day of April, 1857. Hereof fail not.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, the eleventh day of May, 1857.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[L. S.] BEN. F. HICKMAN,
Clerk.

Memo.—The defendant to enter his appearance in this suit, in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN,
Clerk.

Which subpœna was endorsed, as follows:

Memo.—The defendant, James G. Soulard, is, by order of the hon. circuit court of the United States for Missouri districts, enjoined and restrained from having issued and executed the writ of possession and execution for damages and monthly damages upon the judgment obtained by him against compl't, at the April term, 1857, of said court, until further order made in the premises by said court.

Attest: BEN. F. HICKMAN, *Cl'k.*

Upon the foregoing subpœna the marshal made the following return, to wit:

I hereby certify that James G. Soulard cannot be found in my district.

THOS. S. BRYANT,
U. S. Marshal, Eastern District of Missouri.

And afterwards, to wit, on the eleventh day of June, A. D. 1857, the following alias subpœna issued, to wit:

MISSOURI DISTRICTS, *sct.*

The President of the United States to James G. Soulard, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Missouri, on the first Monday of July next, at the city of St. Louis, then and there to answer the bill of complaint of Christian Ott, a citizen of the State of Missouri, filed against you on the 23d day of April, 1857. Hereof fail not.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, the eleventh day of June, 1857.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[L. S.]

BEN. F. HICKMAN, *Cl'k.*

Memo.—The defendant to enter his appearance in this suit in

the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Cl'k*.

Which subpœna was endorsed as follows, viz:

Memo.—The defendant, James G. Soulard, is by order of the hon. circuit court of the United States for Missouri district, enjoined and restrained from having issued and executed the writ of possession and execution for damages, and monthly damages, upon the judgment obtained by him against compl't, at the April term, 1857, of said court, until further order made in the premises by said court.

Att: BEN. F. HICKMAN, *Cl'k*.

Upon which subpœna the marshal made the following return, to wit:

I hereby certify that James G. Soulard cannot be found in my district.

St. Louis, Mo., July 6th, 1857.

THOS. S. BRYANT,
U. S. Marshal, Eastern District of Missouri.

And afterwards, to wit, on the 3d day of August, 1857, at the office of the clerk of the United States circuit court for Missouri districts, and at August rules of said court, the following proceedings took place in said cause, viz:

CHRISTIAN OTT, Compl't
ag'st
J. G. SOULARD, Def't. } In Chancery.

This day comes the defendant, Soulard, by his solicitor, R. M. Field, and enters his appearance in this cause, which said appearance is as follows, to wit:

In United States Circuit Court for district of Missouri.

CHRISTIAN OTT
ag'st
JAMES G. SOULARD. } In Chancery.

James G. Soulard comes and voluntarily enters his appearance in the above entitled suit.

JAMES G. SOULARD.

And afterwards, to wit, at the October term, 1857, of the United States circuit court for Missouri districts, on Monday, October 5th, the following proceedings were had in the above entitled cause, to wit:

CHRISTIAN OTT, Compl't,
ag'st
JAMES G. SOULARD, &c., Def'ts. } In Chancery.

This day came the defendant, Soulard, by his solicitor, and files his answer to the bill of complainant in this cause, which is as follows, viz:

In the Circuit Court of the United States for the districts of Missouri, in Chancery, between Christian Ott, complainant, and James G. Soulard, defendant.

The Answer of the Defendant, James G. Soulard, to the Complainant's Bill of Complaint.

This defendant, for answer to said bill of complaint, says that it is true that a claim of pre-emption to fractional section 26, in township 45 north, range 7 east, was made in the name of Robert Duncan; that such pre-emption claim was proved up, and a formal entry of said fractional section made in the name of said Duncan. The entry at the land office bears date May 2d, 1836, but the defendant is informed and believes, and so states, that the pre-emption claim was made and proved up before that date, and as early as 1835.

The defendant further says, that at the time when said pre-emption claim was proved up, fractional section 26, in said township 45, had been formally and officially surveyed, and did not embrace the lot of land whereon the improvements mentioned in the bill of the complainant were made.

The defendant further says, that fractional section 26 and the lot of land mentioned in the bill are situate within the limits of the town of St. Louis, as it stood incorporated on the 13th day of June, 1812, and also within the out-boundary of said town, directed to be run by the first section of the act of Congress of that date, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

The defendant further says, that by force of the pre-emption claim of said Robert Duncan and his said entry, neither said Duncan nor any person claiming under him obtained any title or just color of title to the lot of land mentioned in the bill as being that on which said improvements were made; that said pre-emption claim and entry were merely void, and were in fact formally cancelled and set aside by the commissioner of the general land office as early as the year 1845.

Touching the several conveyances alleged in the bill to have been made and recorded so as to transfer the title of said Duncan in the lot in question to the complainant, and in respect to the fact of such transfer by any ways or means, the defendant has no knowledge, information, or belief, and he refers the complainant to such proofs as may be made in that behalf.

The defendant admits that there are improvements now standing on the lot of land in question similar in general character to those

mentioned in the bill. He believes those improvements were made by some person or persons claiming under Robert Duncan.

The defendant is now unable to state, from recollection or information, save what is stated in the bill, whether or not said improvements were made by the person or at the time alleged in the bill. He believes the value of said improvements is greatly overrated by the complainant.

The defendant further says, that the person or persons who made such improvements acted with full notice of the title of said lot of land under which the defendant has recovered the possession of said lot. He denies that the complainant has any just or equitable right to recover the value of said improvements; and he further says, that ever since said improvements were made, the person or persons making the same, and those claiming under them, have been in the enjoyment of said lot of land, taking all the profits and income thereof, and have paid no rent therefor to the real owner of said land. No recovery has been had against the complainant, or any of those under whom he claims, for the rent of said land, except for the use and occupation during the last two years.

The defendant insists that if the value of said improvements should be allowed to the complainant, there should be deducted the just rent for the use of said land since said improvements were made. The defendant believes that such rent would be nearly equal to, and perhaps exceed, the value of such improvements.

The defendant admits that he brought an action of ejectment and recovered judgment for the possession of said lot of land as stated in said bill, and that his title was derived from the confirmation to James Mackay's representatives. The defendant has no remembrance, knowledge, information or belief touching the several matters mentioned in the complainant's bill, than what is herein above stated.

The defendants prays to be dismissed with costs.

By his solicitor: R. M. FIELD.

Sworn to before me, by James G. Soulard, this 2d day of October, 1857.

BEN. F. HICKMAN, *Cl'k.*

And afterwards, to wit, at the October term, 1857, of the United States circuit court for Missouri districts, on the 19 day of October, the following proceedings were had in this cause, to wit:

CHRISTIAN OTT, Complainant,
ag'st
JAMES G. SOULARD, Defendant. } In Chancery.

This day comes the complainant by his solicitor, and files a replication, the answer of the defendant, Soulard, which is as follows:

In the Circuit Court of the United States for the districts of Missouri.—In Chancery.

CHRISTIAN OTT, Complainant,
ag'st
JAMES G. SOULARD, Defendant.

The complainant in this cause comes here into court and says that he will aver, and maintain by proof, that the said allegations, matters and things in his bill contained, are just and true, and that the allegations, matters and things in the above answer contained, as therein set forth, are not just or true, and this he is ready to verify, &c.; and he prays as in his said bill.

HANNEGAN & JONES,
Solicitors for Complainant.

At the April term, 1858, of *of* our said circuit court, on the 14th day of April, were had the following proceedings in this cause:

CHRISTIAN OTT, Compl't,
ag'st
JAMES G. SOULARD, Def't. } In Chancery.

This day come the parties by solicitors, and by consent this cause was set for hearing instanter upon bill, answer, replication, exhibits, and agreements of solicitors; and thereupon, after argument of counsel, the cause was heard and submitted to the court; but the court not being fully prepared to render a decree thereon, took time to consider thereof.

Afterwards, at the same term of our said court, on the 15th day of April, the following further proceedings were had, viz:

CHRISTIAN OTT, Compl't,
ag'st
JAMES G. SOULARD, Def't. } In Chancery.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: That the injunction granted the complainant in this cause be now dissolved; that his bill filed herein be dismissed, and that said complainant pay to the defendant the costs of this suit.

At the same term of said court, on the 17th April, the following further proceedings were had, viz:

CHRISTIAN OTT, Compl't,
ag'st
JAMES G. SOULARD, Def't. } In Chancery.

This day comes the complainant by his solicitor, and on his motion an appeal is granted said complainant to the Supreme Court of the United States, from the decree rendered in this cause, and said complainant is allowed ten days within which to execute an appeal

bond in the penalty of two thousand dollars, with such security as may be approved of by either of the judges of this court.

In accordance with the foregoing order, the complainant filed the following bond in this cause, viz:

Circuit Court of the United States for the eighth circuit and Missouri districts.

CHRISTIAN OTT ag'st JAMES G. SOULARD. } On Appeal.

Know all men by these presents, that we, Christian Ott as principal, and Wendelm Leier and Peter Wenger as sureties, are held and firmly bound unto James G. Soulard, his executors or administrators, in the sum of two thousand dollars, and for the payment of which well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 23d day of April, A. D. 1858.

Whereas the above named Christian Ott, on the 17th day of April, A. D. 1858, prayed an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree dismissing the bill with costs, and dissolving the injunction before that time granted to complainant, rendered on the fifteenth day of April, A. D. 1858: Now, therefore, the condition of this obligation is such, that if the above named Christian Ott shall well and truly prosecute the appeal to effect, and answer all damages and costs if he fails to make good his appeal, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

CHRISTIAN OTT, [SEAL.]
WENDELM LEIER. [SEAL.]
PE*NG*ER WENGER. [SEAL.]

Signed and acknowledged by each of the above named obligors before me, and approved by me, this 23d day of April, A. D. 1858.

SAMUEL TREAT,
U. S. Dist. Judge for East. Dist of Mo.

MISSOURI DISTRICTS, *sct.*

Wendelm Leier being sworn, upon oath says, that he is worth the sum of two thousand dollars over and above all his debts and liabilities.

WENDELM LEIER.

Subscribed and sworn to before me this 23d April, 1858.

BEN. F. HICKMAN,
Cl'k U. S. Ct. Ct. Mo. Dis.

Peter Wenger being sworn, upon oath says, that he is worth the sum of two thousand dollars over and above all his debts and liabilities.

PETER WENGER,

Subscribed and sworn to before me this 23d April, 1858.

BEN. F. HICKMAN,
Cl'k U. S. Ct. Ct. Mo. Dis.

At the same term of our said court, and on the same day, to wit, the 17th day of April, the following further proceedings took place, viz:

CHRISTIAN OTT, Compl't, agst. JAMES G. SOULARD, Def't. } In Chancery.

This day come again the parties by solicitors, and file an agreement in writing as to the papers and admissions offered and used in the hearing of this cause, and to be copied in record of said cause, which agreement is as follows, viz:

In the United States Circuit Court in and for the districts of Missouri.

CHRISTIAN OTT, Compl't, agst. JAMES G. SOULARD, Def't. } In Chancery.

By the complainant. An agreement admitting the main allegations in complainant's bill as follows—

In the Circuit Court of the United States in and for the districts of Missouri.

CHRISTIAN OTT agst. JAMES G. SOULARD. } In Chancery.—April Term, 1858.

It is admitted that Eiler made a formal and official survey of fractional section 26, township 45 N., range 7 east, in the fall and winter of 1835 and 1836; that a pre-emption entry of said fractional section 26 was permitted to one Robert Duncan and that the register's certificate therefor was issued to said Duncan, May 2d, 1836; that said Eiler's survey embraces the land and premises now in controversy; that complainant holds said lot and premises, and whatever title and claim existed in and to said Duncan, by force of said entry, by intermediate conveyances from said Duncan, and that the title claimed by complainant to said lot and premises accrued and passed in manner and form as set out and stated in complainant's bill; that the lot lies within map X; that improvements, by building a house, was commenced in the fall of 1836, and completed in May, 1837, to the value of about $9,000.

R. M. FIELD.

JONES, *for Compl't*—

was shown the court.

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A certified copy of the survey of fractional section 26, by L. M. Eiler, deputy *survey*, as follows: Written instruction of Elias F. Langham, surveyor general, T. 45 N., R. 7 east, 5th p. m.

[*For plat see original, page* 28.]

SURVEYOR'S OFFICE,
St. Louis, March 26th, 1836.

A plat and description of fractional section 26, on the right bank of the Mississippi river, in township 45 north of the base-line, range 7 east of the 5th principal meridian, according to the field-notes of the survey thereof, at a variation of 8° 26′ east, by L. M. Eiler, D. S., dated in December, 1835, under instructions from this office in the same month:

Beginning at a stone set of old on the west side of the Carondelet road, for the southeasterly corner of survey No. 2972, in the name of James Mackay, being also the northeasterly corner of survey 2016, in the name of Antoine Soulard, and corner of fractional section 26, township 45 north, range 7 east; thence S. 70½ E. one chain and 31 links, across the Carondelet road, to a cedar post, corner to fractional section 26, and said to be the northwesterly corner of survey No. 1333, in the name of Antoine Soulard, under Gabriel Cerre, from which cedar post a pear tree, eight inches in diameter, bears south 57° E. 70 links; thence S. 67½ E., with the old line of s'd survey No. 1333, 3 chs. and 10 lks., to an old stone, 9 chs. and 13 lks. to an old stone, 10 chs. and 57 lks. to a limestone, 17 inches long, 16 inches wide, and 5 inches thick, set 9 inches in the ground, the edges facing N. 67½ W. and S. 67½ E., corner to frc. sec. 26 and survey No. 1333, from which stone an apple tree, 12 inches diameter, bears west 148 links, a sycamore, 10 inches diameter, bears S. 67° E. 154 links, and a cotton-wood stump, 60 inches diameter, bears N. 87 W. 91 links; thence S. 30½ E. 5 chains 68 links to a limestone, 13 inches long, 10 inches wide, and 6 inches thick, set 8 inches in the ground, the edges facing S. 30½ E. and N. 30½ W., corner to frc. sec. 26 and survey No. 1333, from which stone the sycamore witness-tree mentioned in the last corner bears N. 19 W. 451 links; thence S. 35¾° W. 19 chs. 83 lks. to a limestone, 13 inches long, 11 inches wide, and 3 inches thick, set 8 inches in the ground, the edge facing south 35¾ and N. 35¾ E., corner to frac. section 26 and survey No. 1333, from which stone a locust, 18 inches diameter, bears S. 6° W. 156 links, and a locust, 24 inches diam., bears N. 70 E. 97 lks.; thence S. 22¾ N. 16 chs. 81 lks. to a limestone, 14 inches long, 4 inches thick, and 12 inches wide, set 7 inches in the ground, the edges facing N. 69 W. and S. 69 E., corner to frac. sec. 26 and survey

No. 1333, from which stone a walnut, 14 inches diameter, S. 75 E. 84 lks., and a walnut, 16 inches diameter, bears S. 77 E. 43 lks.; thence S. 71° E. 8 chs. 32 lks. to the Miss. river, to a limestone, 18 inches long, 13 inches wide, and 3 inches thick, set 8 inches in the ground, the edges facing N. 71 W. and S. 71 E., corner to frc. sec. 26, from which stone a sycamore, 2 in. in diam., bears N. 46° W. 56 lks., and a sycamore, 2 in. diam., bears N. 83° W. 52 lks.; thence meander up the west bank of the Mississippi river, N. 18½ E. 2 chs. 21 lks.; thence N. 11° E. 13 chs.; thence N. 22½ E. 21 chs. and 40 lks. to the mouth of Mill creek, 10 lks. wide, in all on the course 25 chs.; thence N. 16 E. 4 chs. 65 lks. to a limestone, on the east side of survey No. 363, in the name of Auguste Chouteau, said stone being 18 inches long, 11 in. wide, and 2½ in. thick, set 12 inches in the ground, the edges facing N. 39½ E. and S. 39½ W., corner to frac. sec. 26, from which stone a sycamore, 3 in. diameter, bears S. 30° W. 52 lks.; thence S. 39½ W. 98 lks. to a limestone, 14 in. long, 10 in. wide, and 4 in. thick, set 7 in. the ground, the edges facing N. 11° 32 E., being the most southern corner of survey No. 363, and corner to frac. sec. 26, from which stone a sycamore, 8 in. diam., bears S. 55 W. 77 lks., and a cotton-wood, with a large old blaze, bears S. 22½ W. 166 lks.; thence N. 11° 32′ W., with old line of survey No. 363, 6 chs. and 50 lks., to the north margin of Mill creek, 15 chs. and 1 lk. to a limestone, 13 ins. long, 11 ins. wide, and 4 ins. thick, set 8 ins. in the ground, the edges facing S. 48° W. and N. 48° E., corner to frac. sec. 26 and survey No. 2972, in the name of James Mackay, from which stone a locust, 6 ins. in diameter, bears N. 14 E. 29 lks.; thence S. 48 W., with the line of survey No. 2972, 18 chs. 88 lks. to the place of beginning.

(Signed) E. T. LANGHAM.

Surveyor's Office, St. Louis, 23d of April, 1840.

The above plat and description of fractional section 26, in township 45 north of the base line, range 7 east of the 5th principal meridian, are correctly copied from the plat and description of said fractional section on file in this office, as certified on the 25 March, 1836, by E. T. Langham, then surveyor general.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

(Bill.) Also Robert Duncan's deed of premises in question to E. T. Langham, as follows:

This indenture, made this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and thirty-five, between Robert Duncan, of St. Louis county, in the State of Missouri, party

of the first part, and Elias T. Langham, of the same county and State, party of the second part, witnesseth: That the said Robert Duncan, part of the first part, for and in consideration of the sum of six thousand dollars, good and lawful money, to him in hand paid by the said Elias T. Langham, party of the second part, at and before the ensealing and delivery of these presents, the receipt of which he, the said Robert Duncan, party of the first part, doth hereby acknowledge, hath given, granted, bargained, alien , enfeoffed, remised, released, assigned and quit-claimed, and by these presents doth give, grant, bargain, alien, enfeoff, remise, release, assign and quit-claim unto him, the said Elias T. Langham, party of the second part, and his heirs and assigns forever, all the estate, right, title, interest, property, claim and demand, both at law and in equity, and as well in possession as in expectancy, of, in, and to all those certain tracts and parcels of land described hereinafter, as follows, namely: a tract of land, situate in the county and State aforesaid, beginning on Mill creek, at a point in the margin thereof, and adjoining the lower bridge over said creek, in the city of St. Louis, which point is below or on the eastern side of said bridge; running thence, up and with the road on the small hill on which the round house formerly stood, to the point where the upper line of Auguste Chouteau's mill tract crosses said road; thence with said line eastwardly to the Mississippi river; thence down said river to the lower corner thereon of said Chouteau's s'd mill tract of land; thence, with twelve degrees west, with another line of s'd Chouteau's s'd mill tract, to a point on the margin of s'd Mill creek; thence up s'd creek, along the margin thereof, to the place of *begins*— being the same tract or parcel of land which was conveyed by Auguste Chouteau *wife* Therese Chouteau to William C. Carr, by deed bearing date the 144 hundred and fourteen, and by the s'd William C. Carr and his wife, Ann Maria Carr, conveyed to the said Robert Duncan, party of the first part, by deed bearing date the twelfth of August, eighteen hundred and fourteen, and now by the s'd Robert Duncan, party of the first part, conveyed by this deed to the s'd Elias T. Langham, party of the second part, free and clear of all incumbrances whatever done or suffered to be done by him, the s'd Robert Duncan, party of the first part, except that the same is conveyed subject to the terms of an article of agreement, leasing a certain part of it to Thomas and James Denny, which s'd article of agreement bears date the seventeenth of January, eighteen hundred and thirty-five, and is herewith delivered to the s'd Elias T. Langham.

Also another tract or parcel of land, situate in the county and State aforesaid, containing four and a half arpents, being in the southern part of the city of St. Louis, on the bank of the Mississippi river, and near the mouth of a creek formerly sometimes called

Tayon's creek, but now generally known as Mill creek, it being the same tract or parcel of land which was conveyed William C. Carr and his wife, Ann Maria Carr, to the said Robert Duncan, party of the first part, by deed bearing date the sixteenth of April, eighteen hundred and fourteen, and now by the s'd Robert Duncan, party of the first part, conveyed by this deed to the s'd Elias T. Langham, party of the second part, free and clear of all incumbrances whatever done or suffered to be done by him, the s'd Robert Duncan, party of the first part, except his conveyance of the twenty-eighth of September, eighteen hundred and thirty, by which he conveyed to James and David Adams one hundred and twenty-five feet, fronting on Church street, and extending back to the bank of the Mississippi river—to the record of which conveyance reference is hereby given, in order to establish the true locality of the ground thereby conveyed.

Also one other tract or parcel of land, situate in the county and State aforesaid, beginning at the most southeasterly corner, next the Mississippi river, of Auguste Chouteau's mill tract of land adjoining the city of St. Louis, as said tract is patented to him (claiming under Laclede Leguest) by the United States, which corner is described in s'd patent to be a cottonwood ; running thence north thirty-nine degrees thirty minutes east, and with a line of said Chouteau's mill tract, according to his patent, to a claim of four and a half arpens of land confirmed to the legal representatives of John Baptiste Provenché; thence eastwardly with s'd Provenché's claim, to the Mississippi river; thence down said river to the upper corner, on the bank thereof, of Antoine Soulard's seventy-six arpens survey, as the same is confirmed in the name of Gabriel Cerre; thence with the upper line of said Soulard's survey westwardly to his northwestern corner, near the public road which leads from the city of St. Louis to the village of Carondelet ; thence up and along said public road, and with a claim in the name of James Mackay, to the point at which said claim in the name of s'd Mackay intersects a line of said Chouteau's said mill tract; thence with said line of said mill tract to the place of beginning ; it being the same tract or parcel of land the right of pre-emption to which he, the said Robert Duncan, party of the first part, claims under the several pre-emption laws of the United States, commencing with the act of Congress of the twelfth of April, eighteen hundred and fourteen, as will more fully appear, reference being had to his application to the register and receiver of the land office of the United States in the St. Louis land district; which application, as well as certain testimony in support thereof, is now on office of said register, and may be seen by all it may concern. It *pressly* understood by and between the parties to these presents that the said Duncan, party of the first part, sells and conveys by this deed the last above described tract of land, as also the tract which is next hereinafter described, subject to the

terms and stipulations of an article of agreement between him and Augustus H. Evans, which said article of agreement bears date the twentieth day of December, eighteen hundred and thirty-four, and is herewith delivered to the said Elias T. Langham.

Also, and lastly, another tract or parcel of land, situate in the county and State aforesaid, containing one hundred and sixty acres, being on the island or sand-bar opposite to the lower part of the city of St. Louis, to include the house and other improvements at this time in the occupancy of the said Robert Duncan, party of the first part; it being the same tract or parcel of land the right of pre-emption to which the said Robert Duncan, party of the first part, claims under the pre-emption laws of the United States, of the nineteenth of June, eighteen hundred and thirty-four, as will more fully appear, reference being had to his application to the register and receiver of the land office of the United States in the St. Louis land district; which application, as well as certain testimony in support thereof, is now on file in the office of said register, and may be seen by all whom it may concern.

To have and to hold the said tracts and parcels of land, with all and singular the improvements, rights, members, and appurtenances thereof, unto him, the said Elias T. Langham, party of the second part, and to his heirs and assigns forever.

In testimony whereof the said Robert Duncan, party of the first part, and he, the s'd Elias T. Langham, party of the second part, have hereunto set their hands and affixed their seals, on the day and in the year first herein before written.

ROBERT DUNCAN. [SEAL.]
E. T. LANGHAM. [SEAL.]

Signed, sealed, acknowledged, and delivered in the presence of—the word "sold," in the twelfth line from the top of the first page, and the word "sell," in the fourteenth line of said page, erased before signing—

JOHN BEND, as to R. Duncan.
N. RANNY, do.
D. HOUGH, as to E. T. Langham.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twelfth day of November, eighteen hundred and thirty-five, before me, D. Hough, a justice of the peace within and for the county aforesaid, appeared Robert Duncan, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the said instrument to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

DANIEL HOUGH,
Justice of the Peace, County of St. Louis.

Recorded November 13th, 1835.

ARCHIBOLD GAMBLE,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned recorder for said county, certify the foregoing to be a true and complete copy of a deed from R. Duncan to E. T. Langham, and also of the certificate of acknowledgment and of the date of recording thereof, as fully as the same is recorded in book V, page 143.

Witness my hand and official seal, this 13th October, [L. S.] 1856.

C. KEEMLE, *Recorder*,
By BEN. B. HICKS, *Dept.*

It was then shown that improvements were made on the premises, to recover which complainant filed his bill to the amount of about eight thousand dollars, beginning in the year eighteen thirty-six and continuing to 1841.

Deed from E. T. Langham to Christian Ott and Christian Ruff.

Know all men by these presents, that Elias T. Langham and Elizabeth Langham, his wife, of the county of St. Louis, in the State of Missouri, for and in consideration of the sum of seven hundred and nine dollars to them in hand paid by Christian Ruff and Christian Ott, of the county of St. Louis, and State of Missouri, at and before the ensealing and delivering hereof, the receipt whereof they do hereby acknowledge, and thereof acquit and forever discharge the said Christian Ruff and Christian Ott, their heirs, executors, and administrators, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Christian Ruff and Christian Ott, their heirs and assigns, forever, lots numbered fourteen and fifteen, in Evans and Langham's addition to the city of St. Louis, which said lots adjoin and are bounded as follows, to wit: Northwestwardly by Carondelet street or avenue; southwardly by one of the lines of survey numbered 1,333, in the name of Antoine Soulard, under Gabriel Cerre; eastwardly by an alley fifteen wide; and northeastwardly by lot numbered thirteen, the property of s'd Langham, together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said above mentioned and described lots, their hereditaments and premises, with the appurtenances, unto the said Christian Ruff and Christian Ott, their heirs and assigns, to the only proper use and behoof of the said Christian Ruff and Christian Ott, their heirs and assigns forever.

And the said Elias T. Langham, for himself, his heirs, executors, and administrators, the said above mentioned described lots of ground and premises against them, the said Elias T. Langham and Elizabeth Langham, and their heirs, and against all and every other person and persons whomsoever, to the said Christian Ruff and Christian Ott, their heirs and assigns, shall and will warrant and forever defend by these presents.

In witness whereof, the said Elias T. Langham and Elizabeth Langham, his wife, have hereunto set their hands and seals, at St. Louis, the tenth day of September, in the year of our Lord eighteen hundred and thirty-six.

ELIAS T. LANGHAM. [SEAL.]
ELIZABETH LANGHAM. [SEAL.]

Signed, sealed, and delivered in presence of—
E. C. McDONALD.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twenty-second day of September, in the year of our Lord eighteen hundred and thirty-six, before me, a justice of the peace within and for the county aforesaid, appeared Elias T. Langham and Elizabeth, his wife, who are both personally known to me to be the persons whose names are subscribed to the within and foregoing instrument of writing, as having executed the same as parties thereto, and severally acknowledged the same to be their act and deed for the purpose therein mentioned. She, the said Elizabeth, being made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her husband.

Taken and certified the day and year aforesaid.

P. WALSH, *Justice*.

STATE OF MISSOURI,
County of St. Louis, ss.

I, John Ruland, clerk of the circuit court, and ex officio recorder for the county aforesaid, do certify that the within and foregoing deed was filed for record in my office, on the twenty-second day of September, 1836, and is truly recorded in book Y, page 214 and following.

Given under my hand and seal of office, at St. Louis, this [L. S.] twenty-first day of October, eighteen hundred and thirty-six.

JNO. RULAND,
Recorder.

(*Bill.*) *Deed of Ruff to Ott.* (See deed of Ruff to Ott, copied in complainant's bill, page 3 of this transcript.)

The Register's Certificate to Duncan, dated May 2d, 1836, of fractional section 26.

ST. LOUIS, Mo., *Jan'y 7th*, 1850.

I find the following entry on the books of the land office at St. Louis, Mo.—

1836, May 2d.—No. 6,848.—Robert Duncan, St. Louis county, Mo.

Fractional section 26, T. 45, R. 7 E,, thirty-five acres $\frac{49}{100}$, for which said Duncan paid forty-four dollars and thirty-six cents, ($44 36,) entered under pre-emption acts of 1814 and 1816.

THOS. WATSON.

I find the foregoing statement to be correct.

RICH'D B. DALLAM,
Receiver.

Certif'te of Entry.

Date of certificate.	No. of certf.	Name.	Residence.	Tract purch'd.			Quantity.		Rates pr. acre.		Am't of sp. money.	
				Sec. or part of.	T.	Range.	Acres.	$\frac{1}{100}$	Dols.	Cts.		
1836. May 2d.	6848	Robt. Duncan.. Pre-em. act of 1814 and 1816.	St. Louis co., Mo.	Frac. 26	45	73	35	49	1	25	44	36

I, W. S. Allen, register of the land office for the district of lands subject to sale at St. Louis, Missouri, certify that the foregoing is a true copy from the register of certificates in my office.

Given under my hand, this twenty-ninth day of May, 1845.

WM. S. ALLEN,
Register—

was shown the court.

The complainant here rested his case.

The defendant gave in evidence a confirmation to one James Mackay, by the act of Congress approved 29th April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana, and in the Territory of Missouri."

A certified copy of the survey of the Mackay tract, numbered 2,017, executed by Deputy Surveyor Brown in 1817, as follows:

[*For plat see original, page* 43.]

140 pa. 43

Scale 40 chs
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No. 2,017, township No. 45 north, range No. 7 east, surveyed for James Mackay, who claims in his own right 288 arpens, equal 245 acres, beginning at Auguste Chouteau's corner stone on the road from the bridge on towards A. Soulard's; thence S. 21 W. 11 ch's, point in Soulard's line 3 ch's 82 links eastward of the large cedar post, his N. W. corner; thence with Soulard's line N. 71 W. 100 ch's 6 links, set post in mound, Mackay's S. W. corner; thence N. 19 E. 16 ch's 80 l'ks, the creek or pond bearing eastward, 100 links wide, 19 ch's 95 l'ks, a stone in A. Chouteau's line, 131 ch's 40 links eastward of his S. W. corner—this stone formerly placed at 45 arpents west bank of creek; thence with Chouteau's line S. 75 E. 46 ch's 60 l'ks, one of Chouteau's corners; thence S. 15 W. 11 ch's 68 l'ks, Chouteau's corner, a stone; thence S. 75 E. 39 ch's 42 l'ks, stone corner; thence N. 15 E. 11 c'hs 68 l'ks, a stone corner; thence S. 75 E. 5 c'hs 84 links, an old corner stone in the edge of the creek, set by Judge Bent; thence S. 12 E., along Chouteau's line, still 20 ch's, the beginning.

JOS. C. BROWN, *D. S.*

SURVEYOR'S OFFICE, ST. LOUIS,
6th of September, 1836.

The foregoing and within plat and notes of survey No. 2,017 are correctly copied from the plat and notes on file in this office. A resurvey, numbered 2,972, has been executed of this claim, and the plat and notes thereof recorded on pages 104 and 105 of book E.

WILLIAM MILBURN,
Chief Clerk.

The parties agreed that the foregoing survey embraced the land in controversy. A certified copy of the survey of the same Mackay tract, numbered 2,972, executed by L. M. Eiler, deputy surveyor, on the 25th January, 1836, under instructions of Elias T. Langham, surveyor general, of the date of the preceding December, which said survey was approved by said surveyor general on the same day.

The parties agreed that this survey did not embrace the land in controversy. A certified copy of the survey of said Mackay tract, numbered 3,123, executed by deputy De Ward, in the month of September, 1837, and approved November 29th, 1843. The parties agreed that this survey did embrace the land in controversy.

The parties further agreed that Soulard's claim, of so much of the Mackay tract as embraced the land in controversy, according to the said surveys by Brown and by De Ward, was acquired by Henry G. Soulard from Mackay's representatives in 1825, and that he conveyed the same to James G. Soulard in September, 1855.

Defendant then gave in evidence the following notices in writi
to Christian Ott and Christian Ruff:

1st.

Mr. CHRISTIAN OTT: ST. LOUIS, 3*d March*, 1838.

SIR: You have erected buildings and made other improvements
either for your own account or jointly with other persons, upon
piece of land north of Mrs. Julia C. Soulard's addition to St. Louis,
which I bought at sheriff's sale, and originally granted to James
Mackay, and on which you now reside, although I gave you no-
tice of my claim before you built. Now, therefore, I command you
to abandon the same forthwith, and remove yourself as well as any
and all your movables therefrom, otherwise you can expect the
rigor of the law against you.

Yours, &c.,

HENRY G. SOULARD.

Sheriff's Return.

Served this notice by delivering a true copy thereof to Christian
Ott, on the 5th day of March, 1838, in the county of St. Louis.

JAS. BROTHERTON,
Sheriff.

By JAS. W. McCLUNG,
D. Sh'ff.

Service.....$0 50.

No. 2.

ST. LOUIS, 1*st Decem'r*, 1840.

Mr. CHRISTIAN OTT, St. Louis, Mo.:

SIR: You are now erecting a stone house and making other im-
provements, either for your own account or jointly with other per-
sons, upon a piece of ground belonging to us adjoining and north-
ward of the northern line of Julia C. Soulard's first addition to
the city of St. Louis. Now, therefore, we command you to abandon
the premises forthwith, and remove yourself and all your movables
therefrom, otherwise the utmost rigor of the law shall be enforced
against you.

Yours, &c.,

JAMES G. *SOURD*,
HENRY G. SOULARD,
BENJ. A. SOULARD.

Sheriff's Return.

Served this notice, in the county of St. Louis, by delivering to

Christian Ott a true copy thereof on the 27th day of January, 1841.

MARSHALL BROTHERTON,
Sheriff.
By HENRY B. BELT, *Dept*.

Service.....50 c.

No. 3.

ST. LOUIS, 3*d March*, 1838.

Mr. CHRISTIAN RUFF:

You have erected buildings and made other improvements, either for your own account or jointly with other persons, upon a piece of land which is north of Mrs. Julia C. Soulard's addition to St. Louis, which I bought at sheriff's sale, and originally granted to James Mackay, and on which you now reside, although I gave you notice of my claim before you built. Now, therefore, I command you to abandon the same forthwith, and remove yourself as well as any and all your movables therefrom, otherwise you can expect the rigor of the law against you.

Yours, &c.,

HENRY G. SOULARD.

Sheriff's Return.

Served this notice by delivering a true copy thereof to Christian Ruff, on the 5th day of March, 1838, in the county of St. Louis.

JAMES BROTHERTON,
Sheriff.
By JAS. W. McCLUNG,
D. Sh'ff.

Service.....50 cts.

No. 4.

ST. LOUIS, 1*st Dec'r*, 1840.

Mr. CHRISTIAN RUFF, Present:

SIR: You are now erecting a stone house and making other improvements, either for your own account or jointly with other persons, upon a piece of ground belonging to us, adjoining and northward of the northern line of Julia C. Soulard's first addition to the city of St. Louis. We now inform you that the ground on which the said house is now building is forcibly held by you. Now, therefore, we command you to abandon the premises forthwith, and remove yourself and all your movables therefrom, otherwise the utmost rigor of the law shall be enforced against you.

Yours, &c.,

JAMES G. SOULARD,
HENRY G. SOULARD,
BENJ. A. SOULARD.

Sheriff's Return.

Served this notice, in the county of St. Louis, on the 27th day of January, 1841, by leaving a true copy thereof at the usual place of abode of Christian Ruff, with a white member of his family over fifteen years of age.

MARSHALL BROTHERTON,
Sheriff.

By HENRY B. BELT,
Deputy.

Service.....50 cts.

Defendant gave in evidence Deputy Sprigg's survey of portions of fractional section 26, certified by Langham, and as follows:

Plat of two detached portions of fractional section 26, in township 45 north of the base line, range 7 east of the 5th principal meridian.

[*For plat see original, page* 48.]

SURVEYOR'S OFFICE,
ST. LOUIS, *5th of April*, 1854.

The above plat of two detached portions of fractional section 26, township 45 north, range 7 east of the 5th principal meridian, is correctly copied from the plat thereof, on file in this office.

(Signed) E. T. LANGHAM.

One of the annexed portions of fractional section 26, T. 45 N., range 7 E., contains 2 $\frac{22}{100}$ acres of land, and is bounded as follows, viz: Beginning at a corner of survey No. 1,333, (in the name of Antoine Soulard under Gabriel Cerre,) on the right bank of the Mississippi river 2,140 chains S. 28½ W. from the upper corner of said survey on said bank of the Mississippi, a post from which a sycamore 14 inches diameter bears N. 6½ E. 121 links, and a thorn 6 inches diameter bears S. 43 W. 94 links distant, and running thence S. 24½ W. with a line of said survey No. 1,333, 16 chains and 69 links, (old measure 15.71 chains,) to the S. E. corner thereof on the north boundary of Joseph Brazeau's survey No. 293, a post from which a plum 5 inches diameter bears N. 32½ W. 52 links, and a black walnut 12 inches diameter bears S. 47 E. 32 links; thence S. 71¼ E. with the north boundary of said survey 298.3 chains and 82 links to a corner post on the right bank of the Mississippi river, (Brazeau's N. E. corner,) from which a sycamore 6 inches diameter bears N. 70 W. 6 lks., and a sycamore 7 inches diameter bears S. 25° E. 3 links; thence up the right bank of the Mississippi river with the meanders thereof N. 2 E. 7 chains N. 18 E. 9 chains 92 links to the place of beginning.

The other of said portions of fractional section 26 T. 45 N. 73 contains 4 $\frac{19}{100}$ acres of land, and is bounded as follows, viz: Be-

ginning at the corner near the bridge of James Mackay's survey No. 2,017, on a line of Auguste Chouteau's survey No. 363, from which a honey locust 24 inches diam. bears S. 22½ W. 30 links, and a honey locust 14 inches diam. bears N. 32½ W. 48½ links distant; thence S. 21 W. with a line of Mackay's said survey No. 2,017 3 chains to the right bank of the creek, 9 chains and 50 links to the right bank of the creek again, having crossed a bend thereof 10 chains and 93 links to a stone, corner of said survey No. 2,017, and of A. Soulard's survey under Gabriel Cerré, No. 1,333; thence S. 30 E. with a line of said survey No. 1,333, 4 chains to a stake on the right bank of the Mississippi river, from which a sycamore 8 inches diam. bears N. 27¾ W. 217 links, and a sycamore 8 inches diameter bears N. 21¾ W. 254 links; thence up the right bank of the Mississippi river with the meanders thereof N. 72° E. 1 chain to the bank of the creek, 2 ch's and 50 links to a cottonwood above the mouth of the creek, and standing on the top of the bank at the junction of the said creek with the Mississippi river; thence N. 17 E. 4 chains and 42 links to the lower corner of Chouteau's survey No. 363 on the right bank of the Mississippi, from which a sycamore 10 inches diam. bears N. 17° E. 285 links, and a cottonwood 14 inches diameter bears S. 34¼ W. 132 links; thence N. 12° W. with a line of Chouteau's s'd survey No. 363.5 chains to the left bank of the creek, 7 chains and 56 links to the right bank of the creek, 8 chains and 86 links to the beginning.

SURVEYOR'S OFFICE,
ST. LOUIS, *November* 2*d*, 1854.

The above plat and description of two detached portions of fractional section 26, in township 45, north of the base line, range 7 east of the 5th principal meridian, as surveyed by Tenifer S. Sprigg, on the 19th and 22d of March, 1834, under instructions from this office, dated the 18th of the same month, together with the certificate of E. T. Langham, are correctly copied from a plat of said detached portions on file in this office.

SILAS REED,
Surveyor of the Public Lands in the States of Illinois and Missouri.

The parties agreed that this survey did not embrace the land in controversy.

Also certificate of entry in favor of Robert Duncan, dated May 2d, 1836, (copied on page 42 of this transcript.) Also letter of the Commissioner of the General Land Office, dated August 1st, 1845, setting aside and cancelling such entry.

Also agreement between Robert Duncan and A. H. Evans, as follows:

An article of agreement made between Robert Duncan and Au-

gustus H. Evans, both of the city of St. Louis, in the State of Missouri, witnesseth: that R. Duncan having proved a pre-emption right on the strip of land between Chouteau's, Soulard's, and Mackay claims, under the act of Congress of 1813, agrees to let the said A. H. Evans have one-half of said pre-emption which lies between the line creek and Soulard and Mackay, by him, the said Evans, paying the United States for the whole pre-emption; and the said Duncan further agrees to let the said A. H. Evans have the one-half of another pre-emption of 160 acres *is* obtained, if a less quantity is obtained, or 80 acres is *obtain*, then 20 acres to said Evans, and that proportion between, as settled under the act of Congress of 1829 and 1834, giving to settlers *and* public land the right of pre-emption; the same being on an island, and the settlement on the N. E. qu'r of sec. 26, T. 45 N., R. 7 E., in the city aforesaid, by him, the said Evans, paying to the United States all the consideration money for the pre-emption, be the quantity of land obtained in either of the pre-emptions more or less.

In witness whereof we have hereunto set our hands and seals, this the 20th day of December, 1834.

ROBERT DUNCAN, [SEAL.]
A. H. EVANS. [SEAL.]

Note in the original.—The interlineation made between the tenth and eleventh lines from the top, was made before signing.

Witness: HENRY CHOUTEAU.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this eleventh day of May, in the year of our Lord eighteen hundred and thirty-six, before me, the clerk of the county court within and for the county aforesaid, came Robert Duncan and Augustus H. Evans, who are both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledge the same to be their act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of said court at the city of St. Louis, the day and year aforesaid.

HENRY CHOUTEAU, *Clerk.*

Filed for record May 12th, 1836, and recorded 27th May, 1836.
JNO. RULAND, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for said county and State, do hereby certify, that the foregoing is a true and correct copy of an article of agreement made between Robert Duncan and

Augustus H. Evans, as also of the certificate of acknowledgment, and the date of filing and recording thereof, as fully as the same remains on record in my office, in book W, page 326.

Witness my hand and official seal, this 18th day of October, 1856.

[SEAL.]

C. KEEMLE, *Recorder*.
By BENJ. HICKS, *Deputy*.

Also deed of Robert Duncan to E. T. Langham, as follows: (Copied on 31 and following of this transcript.)

Also letter of E. T. Langham, surveyor general, to William Christy, register of St. Louis, as follows:

SURVEYOR'S OFFICE,
ST. LOUIS, 25*th of November*, 1836.

To WM. CHRISTY, Esq., Reg. at St. Louis.

SIR: You will receive herewith *and* plat and description of fractional section 26, township 45 north, of range 7 east of the fifth principal meridian, adjoining the right bank of the Mississippi, according to the recent corrected survey thereof.

I will thank you to return the plat of two fractions of this section, transmitted to your office in 1834, and to place this on file in lieu thereof.

I am, very respectfully, sir, your ob't serv't,
E. T. LANGHAM.

LAND OFFICE, ST. LOUIS, MO.,
Oct. 13*th*, 1856.

I hereby certify, that the above is a true copy of a letter on file in this office.

D. C. TUTTLE, *Register*.

The parties agreed that the land was embraced by map X, which purported to be the survey of the out-boundary of St. Louis, as established by the surveyor general, under the provisions of the 1st section of the act of Congress of 13th June, 1812, and that said map may be produced before the Supreme Court, out of the custody of either party.

The papers and agreements mentioned above were those used on the hearing of the above entitled cause, and the parties agree that the clerk may enter them upon the roll as above stated.

JONES, *for Complainant*.
FIELD, *for Defendant*.

MISSOURI DISTRICTS, *sct*.

I, Benj. F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, do hereby certify the foregoing to be a true and correct copy of the pleadings, proceedings and exhibits, in a certain cause in said circuit court, determined between